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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,391	01/28/2004	Anthony Di Bitonto	B0224.0079	2535

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EXAMINER

NGUYEN, PHONG H

ART UNIT PAPER NUMBER

3724

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/765,391	Applicant(s) DI BITONTO ET AL.	
	Examiner Phong H. Nguyen	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13, 15-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 9, 10, 12, 13, 15, 16 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-8, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Newly submitted claims 16 and 21 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim<sup>16</sup> 21 reads on a non-elected Species A as shown in Fig. 4.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16 and 21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipate by Litton (Des. 392,419).

Regarding claims 1 and 5, Litton teaches a nail clipper comprising top and bottom elongated members, a post, a lever and a bumper on a bottom surface of the bottom member. See Fig. 1.

Regarding claim 8, the cutting edges are at an angle of 90 degrees with respect to a central longitudinal axis of the top and bottom elongated members.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 6, 7, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsay (5,063,666) in view of Litton (Des. 392,419).

Regarding claims 1, 17 and 19, Tsay teaches a nail clipper comprising top 31 and bottom 3 elongated members, a post 4 and a lever 2. See Fig. 1.

Tsay fails to teach providing a bumper on a bottom surface of the bottom member. Litton teaches providing a bumper on a bottom surface of the bottom member for comfortably gripping. Therefore, it would have been obvious to one skilled in the art to provide a bumper as taught by Litton on a bottom surface of the bottom member of the Tsay's nail clipper for comfortably gripping.

Regarding claim 6, Tsay teaches the invention substantially as claimed except for a thumb accept depression on the lever. Litton teaches a thumb accept depression on the lever. See Fig. 1. Therefore, it would have been obvious to one skilled in the art to provide a thumb depression as taught by Litton on the lever surface of the Tsay's nail clipper for comfortably gripping.

Regarding claim 7, cutting edges of the Tsay's nail clipper are at an angle with respect to a central longitudinal axis of the elongated member.

Regarding claim 20, the bumper is best seen in Fig. 1 in Litton.

### ***Response to Arguments***

6. Applicant's arguments, see the Remark filed 03/27/2006, with respect to the drawing objections and 35 USC 112 rejections have been fully considered. Drawing objections, specification objections and 35 USC 112 rejections have been withdrawn.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cho (US Pub. 2004/0194795 A1) and Rommerdale (5,052,416) teach nail clippers of general interest.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

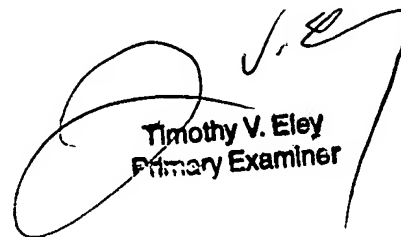
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN: 

May 24, 2006

  
Timothy V. Eley  
Primary Examiner